

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYERS MUTUAL CASUALTY
COMPANY

Case No.: 2:18-cv-976

Plaintiff

v.

THE CHURCH OF THE LIVING GOD
INTERNATIONAL, INC.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

and

POOL OF BETHESDA CHURCH OF THE
LIVING GOD INTERNATIONAL, INC.

and

MARY BUTLER

and

MARTHA EDWARDS

and

WILLIAM LEE

and

CHARLES ROBINSON

Defendants

Comes now the Plaintiff, Employers Mutual Casualty Company, and pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. 2201, states as follows for its Complaint for Declaratory Judgment against the Defendants.

THE PARTIES

1. Employers Mutual Casualty Company (EMC) is an Iowa corporation, whose principal place of business is in Des Moines, Iowa. EMC is a property and casualty insurer, authorized and licensed to conduct business in the state of Ohio.

2. The Church of the Living God International, Inc. is a religious body located in Columbus, Ohio, and whose principal place of business is in Columbus, Ohio. It has been an Ohio non-profit corporation since April 16, 2001. Upon information and belief, it operated as an unincorporated entity prior to April 16, 2001.

3. In the action of Charles Robinson v. The Church of the Living God International, Inc., et al., Circuit Court for the City of Hampton, Case No. C-18-1000, it is alleged that Pool of Bethesda Church of the Living God International, Inc. is an Ohio Corporation, operating as a Church. Plaintiff has been unable to confirm the existence of such a corporate entity, but “Pool of Bethesda Church of the Living God International, Inc.” is included as a party to this declaratory judgment action so that there is complete identity of all parties to this declaratory judgment action and the action currently pending in Virginia.

4. Mary Butler is an Ohio citizen, and at all times relevant hereto was an officer, director, member of the clergy and/or employee of The Church of the Living God International, Inc.

5. Martha Edwards is an Ohio citizen, and at all times relevant hereto was an officer, director, member of the clergy, and/or employee of The Church of the Living God International, Inc.

6. William Lee is an Ohio citizen, and at all times relevant hereto was an officer, director, member of the clergy, and/or employee of The Church of the Living God International, Inc.

7. Charles Robinson is a Virginia citizen and at all times relevant hereto was Secretary to the Board of Directors of The Church of the Living God International, Inc., and also served as an officer, director, member of the clergy, and/or employee of The Church of the Living God International, Inc.

JURISDICTION AND VENUE

8. This is an action for declaratory judgment brought pursuant to 28 U.S.C. 2201. EMC seeks a declaration of its rights and responsibilities arising from certain policies of insurance entered into between it and The Church of the Living God International, Inc.

9. The insurance policies at issue are all Ohio contracts, entered into in the state of Ohio, and involving an Ohio insurance broker.

10. Charles Robinson is named as a party to this action so that any declaratory judgment entered into by this action is binding upon him, pursuant to the Ohio Supreme Court decision in *Estate of Heintzelman v. Air Experts, Inc.*, 126 Ohio St. 3d 138, 2010-Ohio-3264, 931 N.E. 2d 548.

11. Charles Robinson was actively and closely involved within the ecclesiastical structure of The Church of the Living God International, Inc. As a result, he had regular contact with The Church of the Living God International, Inc. in Ohio, including but not limited to his employment, financial dealings, real estate dealings, and dealings pertaining to the organization and operation of The Church of the Living God International, Inc. and its affiliated Churches.

12. This Honorable Court has diversity jurisdiction pursuant to 28 U.S.C. 1332, as there is total and complete diversity between the parties.

13. Venue is proper pursuant to 28 U.S.C. 1391(b), as this is the United States District Court for the district and division where the policyholder, The Church of the Living God International, Inc., is incorporated, has its principal place of business, and where the insurance policies at issue were entered into. Furthermore, the individual officers, directors, members of the clergy, and employees of The Church of the Living God International, Inc., whom Charles Robinson accuses of misconduct, all have their principal place of residence and employment in this district and division.

14. A substantial part of the events or omissions giving rise to the claims set forth in the underlying lawsuit upon which this declaratory judgment action is based, occurred in Columbus, Ohio.

15. The amount in controversy between the parties exceeds \$75,000.00, exclusive of interest, attorney's fees, and costs.

UNDERLYING LAWSUIT

16. On April 20, 2018, Charles Robinson filed suit against The Church of the Living God International, Inc.; Pool of Bethesda Church of the Living God International, Inc.; Mary Butler; Martha Edwards; and William Lee in the Circuit Court for the City of Hampton, Virginia, case number C-18-1000. This proceeding is referred to herein as "the Virginia litigation."

17. A copy of the Virginia lawsuit, with all exhibits thereto, is attached as **Exhibit A**.

18. There are three types of claims asserted by Mr. Robinson in the Virginia litigation, and they are as follows:

1. Defamation
2. Defamation Per Se
3. Intentional Infliction of Emotional Distress

19. Among the relief sought in the Virginia litigation is an award of punitive damages.

20. The Church of the Living God International, Inc.; Pool of Bethesda Church of the Living God International, Inc.; Mary Butler; Martha Edwards; and William Lee requested EMC defend them in the Virginia litigation. EMC has agreed to do so, under a reservation of rights.

EMC INSURANCE POLICIES

21. EMC issued a Commercial General Liability (CGL) insurance policy to The Church of the Living God International, Inc., which was in effect during the same time period as the allegations asserted in the Virginia litigation.

22. EMC issued a Businessowners (BOP) insurance policy to The Church of the Living God International, Inc., which was in effect during the same time period as the allegations asserted in the Virginia litigation.

23. Copies of these insurance policies are not attached to this Complaint because of their voluminous nature, but will be made available to all counsel, the parties, and the Court, during the course of discovery and throughout this litigation.

24. The EMC policies contain express terms and conditions regarding EMC's duty to defend and duty to indemnify The Church of the Living God International, Inc.; Pool of Bethesda Church of the Living God International, Inc.; Mary Butler; Martha Edwards; and William Lee for the claims asserted against them in the Virginia litigation.

CGL POLICY

25. The relevant portions of EMC's CGL policy state as follows:

SECTION I – COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment *of judgments or settlements* under Coverages **A** or **B** or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b.** This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph **1.** of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to"

(1) An "employee of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother, sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract."

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury."

**COVERAGE B - PERSONAL AND ADVERTISING INJURY
LIABILITY**

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement."

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business address is:

(1) Advertising, broadcasting, publishing or telecasting;

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury";

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by;
- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However;
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

ADDITIONAL INSURED -- CHURCH MEMBERS AND OFFICERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

B. Section II -- Who Is An Insured is amended to include the following as insureds:

1. Any of your church members, but only with respect to their liability for your activities or activities they perform on your behalf.
2. Any:

- a.** Trustee, official or member of the board of governors of the church; or
 - b.** Members of the clergy
- but only with respect to their duties as such.

(Form CG 20 22 10 01).

SECTION V - DEFINITIONS

- 1.** "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
- a.** Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b.** Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

- 3.** "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

- 5.** "Employee" includes a "leased worker". "Employee does not include a "Temporary worker."
- 6.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

- 10.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a.** False arrest, detention or imprisonment;
- b.** Malicious prosecution;
- c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e.** Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f.** The use of another's advertising idea in your "advertisement"; or
- g.** Infringing upon another's copyright, trade dress or slogan in your "advertisement".

17. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on lease or to meet seasonal or short-term workload conditions.
- 20.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

The policy's "General Liability Essential Extension Endorsement" (Form CG 71 91) (8-14)), provides as follows in relevant part:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended to include the following clarifications and extensions of coverage. The provisions of the coverage part apply unless modified by an endorsement.

A. EXPECTED OR INTENDED INJURY

Section I – Coverage A, Exclusion a. is amended as follows:

- a.** "Bodily injury" or "property damage" expected or intended from the standpoint of an insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

H. SUBSIDIARIES AS INSUREDS

Section II – Who Is An Insured is amended to add the following:

- 1.f.** Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

N. MENTAL ANGUISH

Section V – Definition 3. is replaced by the following:

“bodily injury” means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

The policy includes an “Employment-Related Practices Exclusion” (Form CG 21 47 12 07), which provides as follows:

- A. The following exclusion is added to Paragraph 2., Exclusion of Section I – Coverage A – Bodily Injury and Property Damage Liability:

This insurance does not apply to:

“Bodily injury” to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person’s employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The following exclusion is added to Paragraph 2., Exclusions, of Section I – Coverage B – Personal and advertising Injury Liability:

“Personal and advertising injury” to:

- (1) A person arising out of any:

- (a) Refusal to employ that person;
- (b) Termination of that person's employment; or
- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

The policy incorporates an "Abuse or Molestation Exclusion" (Form CG 21 46 07 98), which provides as follows:

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
- 2. The negligent:
 - a. Employment;
 - b. Investigation;
 - c. Supervision;
 - d. Reporting to the proper authorities, or failure to so report; or
 - e. Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

BOP POLICY

26. The relevant portions of EMC's Businessowners policy state as follows:

SECTION II - LIABILITY

A. Coverages

1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Paragraph **D. Liability And Medical Expenses Limits Of Insurance** in Section II - Liability; and

(2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph f. Coverage Extension- Supplementary Payments.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph **C.1. Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or

resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known before the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph C.1. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph C.1. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

B. Exclusions

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" caused by the rendering or failure to render any professional service. This includes **but is not limited to:**

* * *

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering or failure to render of any professional service.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

p. Personal and Advertising Injury

"Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (7) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (8) Committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting ***

* * *

r. Criminal Acts

"Personal and advertising injury" arising out of a criminal act

committed by or at the direction of the insured.

* * *

C. Who Is An Insured

1. If you are designated in the Declarations as:

* * *

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

* * *

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a) or (b); or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
- (a) Owned, occupied or used by;
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
- you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

* * *

The policy's Extension Endorsement (BP7100 (7-13)) amends "Section II - Liability," with respect to "who is an insured," as follows:

* * *

- 4. The following is added to Paragraph C.1. **Who Is An Insured:**
 - f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, an insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such policy, but for termination of that policy or the exhaustion of that policy's limits of liability.
- 5. The following is added to Paragraph C. **Who Is An Insured:**
 - 3. Any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company and over which you maintain ownership or majority interest, will qualify as a

Named Insured if there is no other similar insurance available to that organization.

However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Paragraph **A.1. Business Liability** does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

This provision does not apply to newly formed or acquired organizations if coverage is excluded either by the provisions of the Coverage Part or by endorsements.

* * *

F. Liability And Medical Expenses Definitions

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

* * *

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

* * *

- 5.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 6.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by laws or any other similar governing document.

* * *

- 10.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

* * *

- 13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

- 17.** "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

c.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

The policy's Extension Endorsement" (Form BP7100 (7-13)) modifies the Businessowners' Coverage Form, including, in particular, the definition of "bodily injury."

SECTION II – LIABILITY

Section II - Liability is amended to include the following clarifications and extensions of coverage. The provisions of the coverage form apply unless modified by the endorsement.

7. Paragraph **F.3. Liability And Medical Expenses Definitions** is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death, resulting from any of these at any time.

The policy contains an "Employment-Related Practices Exclusion" (Form BP 04 17 01 10). This Exclusion provides as follows:

The following exclusion is added to Paragraph B.1. Exclusions – Applicable To Business Liability Coverage in Section II – Liability:

This insurance does not apply to “bodily injury” or “personal and advertising injury” to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person’s employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” or “personal and advertising injury” to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

(Form BP 04 17 01 10). (emphasis added)

The policy also contains an "Abuse or Molestation Exclusion" (Form BP 04 39 07 02) which modifies the Businessowners Coverage Form as follows:

The following applies to Section II – Liability and supersedes any provision to the contrary:

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of:

- (a) The actual or threatened abuse or molestation by anyone or any person while in the care, custody or control of any insured, or

(b) The negligent:

- (i) Employment;
- (ii) Investigation;
- (iii) Supervision;
- (iv) Reporting to the proper authorities, or failure to so report; or
- (v) Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

The policy includes an "Employment-Related Practices Exclusion" (Form BP 04 17 01 10), which provides as follows:

A. The following exclusion is added to Paragraph **B.1., Exclusions – Applicable to Business Liability Coverage in Section II - Liability**:

This insurance does not apply to "bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs **(a)**, **(b)** or **(c)** above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THE EXISTENCE OF A JUDICABLE CONTROVERSY

27. The Church of the Living God International, Inc.; Pool of Bethesda Church of the Living God International, Inc.; Mary Butler; Martha Edwards; and William Lee requested that EMC defend and indemnify them against allegations asserted by the Charles Robinson in the Virginia litigation.

28. There is no coverage under any of the EMC policies, as some or all of the Defendants do not qualify as “insureds” under any of the potentially applicable policies.

29. There is no coverage due under any of the EMC policies, because the acts and conducts alleged in the Virginia litigation do not constitute an “occurrence,” “bodily injury,” or “property damage,” as defined by any of the potentially applicable EMC insurance policies.

30. There is no coverage under any of the EMC policies, based upon the policies’ exclusions, including, without limitation, “bodily injury” and “property damages” exclusions for “expected or intended injury,” “employer’s liability,” and “damage to property,” and various “personal and advertising injury” exclusions, as more fully set forth in the preceding paragraphs.

31. There is no coverage under any of the EMC policies, as coverage is expressly excluded based upon Charles Robinson’s position as an employee and/or officer of The Church of the Living God International, Inc.

32. There is no coverage under any of the EMC policies for punitive damages, based upon Ohio common law and Ohio public policy.

WHEREFORE, Plaintiff prays that this Honorable Court issue an order declaring it has no duty to defend or indemnify The Church of the Living God International, Inc.; Pool of Bethesda Church of the Living God International, Inc.; Mary Butler; Martha

Edwards; and William Lee on any of the claims asserted against them by Charles Robinson in the Virginia litigation.

Respectfully submitted,

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